



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, वीरवार, 28 नवम्बर, 2013/7 अग्रहायण, 1935

हिमाचल प्रदेश सरकार

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171001

NOTIFICATION

Shimla-1, the 27th November, 2013

No. HHC/15-41/Jus/Acctts/2013.—It is hereby notified that on transfer from the Jammu & Kashmir High Court to the High Court of Himachal Pradesh, ordered vide Notification No.K 11017/13/2013-US.II dated 19th November, 2013 of the Government of India, Ministry of Law and Justice (Department of Justice), New Delhi, Hon'ble Mr. Justice Mansoor Ahmad Mir, has

assumed the charge as Judge of the High Court of Himachal Pradesh in the forenoon of 27th November, 2013.

By order,
A. C. DOGRA,
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171001

NOTIFICATION

Shimla-1, the 27th November, 2013

No. HHC/15-41/Jus/Accts/2013.—It is hereby notified that Hon'ble Mr. Justice Mansoor Ahmad Mir, Judge, High Court of Himachal Pradesh, pursuant to Notification No.K.11019/1/2013 US.I dated 25th November, 2013 issued by the Government of India, Ministry of Law and Justice (Department of Justice), New Delhi, has assumed the charge of the office of the Acting Chief Justice of the High Court of Himachal Pradesh in the forenoon of 27th November, 2013.

By order,
A. C. DOGRA,
Registrar General.

गृह विभाग

अधिसूचना

शिमला-2मई, 2013

संख्या गृह-सी0 (वी) 2-1/2011.—हिमाचल प्रदेश के राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से इस विभाग की अधिसूचना संख्या गृह-सी(ए)3-7/2006, तारीख 1-9-2007 द्वारा अधिसूचित हिमाचल प्रदेश, गृह विभाग, राज्य न्यायालयिक प्रयोगशाला, में सहायक निदेशक (भौतिकी एवं प्राक्षेपिकी), वर्ग-I(राजपत्रित) पद के भर्ती और प्रोन्नति, नियम, 2007 में और संशोधन करने के लिए निम्नलिखित नियम बनाती है, अर्थातः—

1. संक्षिप्त नाम और प्रारम्भ.—(1) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश, गृह विभाग, राज्य न्यायालयिक प्रयोगशाला में सहायक निदेशक(भौतिकी एवं प्राक्षेपिकी), वर्ग-I(राजपत्रित) भर्ती और प्रोन्नती (प्रथम संशोधन) नियम, 2013 है।

(2) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे।

2. उपाबन्ध 'क' का संशोधन.—हिमाचल प्रदेश, गृह विभाग, राज्य न्यायालयिक प्रयोगशाला, में सहायक निदेशक (भौतिकी एवं प्राक्षेपिकी), वर्ग-I(राजपत्रित) भर्ती और प्रोन्नति नियम, 2007 के उपाबंध 'क' में:—

(क) स्तंभ संख्या-4 के सामने विद्यमान उपबंधों के स्थान पर निम्नलिखित रखा जाएगा, अर्थात् :—
₹15600-39100 रुपए + 6600 रुपए ग्रेड पे

आदेश द्वारा,
हस्ताक्षरित /—
प्रधान सचिव(गृह)।

[Authoritative English text of this Government Notification number Home-C(B)-2-1/2011, dated ---
----- as required under clause(3) of Article 348 of the Constitution of India]

HOME DEPARTMENT

NOTIFICATION

Shimla-2, the May, 2013

No: Home-C(B)2-1/2011.—In exercise of the powers conferred by proviso to Article 309 of the constitution of India, the Governor, Himachal Pradesh, in consultation with the Himachal Pradesh Public Service Commission, is pleased to further amend the Recruitment & Promotion Rules for the post of **Assistant Director (Physics & Ballistics), Class-I** (Gazetted) notified in State Forensic Science Laboratory, Home Department, Himachal Pradesh vide this department Notification No. Home-C(A)-3-7/2006 dated 1-9-2007, namely;—

1. Short title and Commencement.—(1) These Rules may be called the Himachal Pradesh, State Forensic Science Laboratory, Home Department, Assistant Director (Physics & Ballistics), Class-I (Gazetted) Recruitment and Promotion (First Amendment) Rules, 2013.

(2) These Rules shall come to force from the date of publication in the Rajpatra, Himachal Pradesh.

2. Amendment of Annexure “A”.—In Annexure “A” to the Himachal Pradesh State Forensic Science Laboratory, Assistant Director(Physics & Ballistics) Class-I (Gazetted), Recruitment and Promotion Rules, 2007:—

(a) For the existing provisions against Column No. 4, the following shall be substituted, namely:—

“Rs. 15600-39100+6600 GP.”

By order,
Sd/-
Principal Secretary(Home).

बहुउद्देशीय परियोजनाएँ एवं विद्युत विभाग

अधिसूचना

शिमला, 26 नवम्बर, 2013

संख्या विद्युत-छः(5)—31/2013.—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश ऊर्जा संचार निगम लिमिटेड, उत्तम भवन, शिमला-4, जो कि भूमि अर्जन अधिनियम 1894 (1894 का पहला अधिनियम) की धारा 3 के खण्ड (सी.सी.) के अन्तर्गत सरकार के स्वामित्व और नियन्त्रण के अधीन एक निगम है के द्वारा अपने व्यय पर सार्वजनिक प्रयोजन हेतु नामतः फाटी/मुहाल—शिलीहार, तहसील व जिला कुल्लू में 132/220 के0 बी0 उपकेन्द्र के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है अतएव एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. भूमि अर्जन अधिनियम, 1894 की धारा-6 के उपबन्धों के अधीन इससे सम्बन्धित सभी व्यक्तियों की सूचना हेतु घोषणा की जाती है और उक्त अधिनियम की धारा-7 के उपबन्धों के अधीन भू-अर्जन समाहर्ता, हिमाचल प्रदेश राज्य ऊर्जा संचार निगम लिमिटेड, उत्तम भवन, शिमला-4 को उक्त भूमि के अर्जन के लिए आदेश लेने का एतद्द्वारा निर्देश दिया जाता है।

3. इसके अतिरिक्त उक्त अधिनियम की धारा-17 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हिमाचल प्रदेश के राज्यपाल यह निर्देश देते हैं कि अति आवश्यक मामला होने के कारण भूमि-अर्जन समाहर्ता हिमाचल प्रदेश राज्य ऊर्जा संचार निगम लिमिटेड, उत्तम भवन, शिमला-4, उक्त अधिनियम की धारा 9 की उप धारा (1) के अधीन नोटिस के प्रकाशन के 15 दिन की अवधि समाप्त होने पर पंचाट देने से पूर्व भूमि का कब्जा ले सकते हैं।

4. भूमि से सम्बन्धित रेखांक का निरीक्षण, कार्यालय, भू-अर्जन समाहर्ता, हिमाचल प्रदेश ऊर्जा संचार निगम लिमिटेड, उत्तम भवन, शिमला-4 में किया जा सकता है।

विवरणी

जिला	तहसील	फाटी/उपमुहाल	उपकेन्द्र	खसरा नम्बर	रकबा (बीघो में)
कुल्लू	कुल्लू	शिलीहार	छारौर	3456/2	00-16-02
				3457/2	00-16-14
				3458/2	00-16-18
				3463	01-07-00
				3464	01-02-00
				3465	01-05-00
				3466	01-16-00
				3471/2	00-13-15
				3472/2	00-11-15
				3476/2	00-15-15
				3477	00-10-00
				3478	00-12-00
				3479/2	00-18-04
				3480	00-11-00
				3481	00-11-00
				3482/3	00-13-06
				3488/3	00-02-18
				3492/2/2	00-01-08
किता-18				रकबा तादादी	14-00-15

आदेश द्वारा,
हस्ताक्षरित/-
प्रधान सचिव (विद्युत)।

SOCIAL JUSTICE & EMPOWERMENT DEPARTMENT**NOTIFICATION***Shimla-02, the 8th July, 2013*

No. SJE-F(10)-19/2000.—In continuation of this Department's letters of even number dated 12-9-2012 and 19-2-2013 and in exercise of the powers vested under Section-29 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (Act, No. 56 of 2000) and Rule 19 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, the Governor of Himachal Pradesh is pleased to constitute Child Welfare Committees for a period of 3 years from the date of this notification for the following Districts as under:—

Hamirpur District :

1.	Sh. Sardari Lal Changra S/o Late Sh. Tulsi Ram Vill- Masudhi, P.O. Saur, Teh- Barsar, Distt Hamirpur H.P.-1716041, M.No.94597-72282	<i>Chairperson</i>
2.	Milkhi Ram S/o Sh. Hari Ram, House No-9 Ramgali, Ward No. 2, Teh/Distt-Hamirpur. Mob. No. 9418370008	<i>Member</i>
3.	Pushpa Thakur, D/o Sh. Bishasher Singh, Vill-Bhadru, P.O. Kanjian, Teh-Bhoranj, Distt-Hamirpur (H.P.) Mob. No.-9418636326, 9459123477	<i>Member</i>
4.	Vidya Sagar, S/o Sh. Sant Ram, Vill- Lathwan, P.O.- Ladraur, Teh-Bhoranj, Distt Hamirpur (H.P.) Mob. No.-9418057555	<i>Member</i>
5.	Smt. Manorama Lakhanpal, W/o Sh. Chetandeep Lakhanpal, Vill Dhabriana, P.O. Bani, Tehsil Barasr, Distt. Hamirpur (H.P.) Ph./Mobile No 01972-225369, 94189-94917	<i>Member</i>

District Solan :

1.	Smt. Surinder Viridi, Pine Apartment, Pine Estate, PO Saproon, Deonghat, Distt. Solan-173211	<i>Chairperson</i>
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Sirmour District :

1.	Sh. Upender Kumar, Vill. Bankla, P.O. Shambhuwala, Teh. Nahan Distt. Sirmour (H.P.) Pin Code-173001 Mob. No.-9459023753	<i>Chairperson</i>
2.	Sh. Shakil Ahmed Sheilh, S/o Sh. Akhtar Ali House No. 2026/7 Bazar Gunnu Ghat Nahan-173001 Distt Sirmour H.P.	<i>Member</i>
3.	Sh. Naseem Mohd. Diddan, S/o Late Sh. Nasirudeen, Tel. & Mob. Nos. 01702-224257 & M. 09816319596	<i>Member</i>

Chamba District :

1.	Sh. Rajeev Kaushal, S/o Uttam Chand Kaushal, VPO Chowari, Teh-Bhattiyat, Distt-Chamba (HP) 176302 Mob. No-9418161362	<i>Member</i>
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Lahaul & Spiti District :

1.	Sh. Vipin Kumar, S/o Sh. Prem Dass Vill. Goherma, P.O. Jahalma DisttLahaul & Spiti, H.P. 175129	<i>Member</i>
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By order,
P. C. KAPOOR,
Addl. Chief Secretary (SJ&E).

SOCIAL JUSTICE AND EMPOWERMENT DEPARTMENT**NOTIFICATION***Shimla-02, the 6th August, 2013*

No. SJE-F(10)-19/2000.—In continuation of this Department's letters of even number dated 12-9-2012, 19-2-2013 & 8-7-2013 and in exercise of the powers vested under Section-29 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (Act, No. 56 of 2000) and Rule 19 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, the Governor of Himachal Pradesh is pleased to constitute Child Welfare Committee for District Kinnaur for a period of 3 years from the date of this notification comprising of the following:—

Kinnaur District :

1.	Smt. Saraswati Negi W/o Shri Jaswant Singh Negi, VPO Kalpa, District Kinnaur, H.P. 172108	<i>Chairperson</i>
2.	Shri Chhaya Ram Sharma S/o Shri Dina Nand Sharma, Village Brow, PO Rampur Bushehr, Tehsil Nirmand, Distt. Kullu, H.P.	<i>Member</i>
3.	Shri Dev Kumar Sharma S/o Late Shri Laxmi Nand Sharma, VPO Shingla, Tehsil Rampur Bushehr, Distt. Shimla, Himachal Pradesh	<i>Member</i>

By order,
Dr. P. C. Kapoor,
Addl. Chief Secretary (SJ&E).

SOCIAL JUSTICE AND EMPOWERMENT DEPARTMENT**NOTIFICATION***Shimla-02, the 27th November, 2013*

No. SJE-F(10)-19/2000.—In continuation of this Department's letters of even number dated 12-9-2012, 19-2-2013, 8-7-2013 & 6-9-2013 and in exercise of the powers vested under Section-29 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (Act, No. 56 of 2000) and Rule 19 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, the Governor of Himachal Pradesh is pleased to nominate the following as Member of the Child Welfare Committees of the respective Districts as mentioned under for a period of 3 years from the date of this notification for the following Districts as under:—

Chamba District :

1.	Dr. P. K. Gupta S/o Late Shri Rattan Chand, Mohalla Ramgarh, PO & Distt. Chamba, H.P.-176310 Contact No. 94180-08323, 018899-224150	<i>Member</i>
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Lahaul & Spiti District :

1.	Shri Hira lal S/o Shri Dhani Ram, Village Shooling, PO Goumbhla, Tehsil Lahaul Spiti, HP-175132 Contact No. 94186-60879.	<i>Member</i>
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2.	Shri Anil Kumar S/o Shri Shyam Ram, VPO Malang, Distt. Lahaul & Spiti, HP-175132 Contact No. 94181-95550	<i>Member</i>
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Solan District :

1.	Smt. Shalini Sethi W/o Shri Aman Sethi, H.No. 10A, Phase-II, Housing Board Colony, Solan, HP Contact No. 98827-83500,01792-227500	<i>Member</i>
2.	Smt. Sushma Musafir, D/o Shri G.R. Musafir, Caste Grove Building, Boileauganj, Shimla-171005 Cont. No.94189-03964.	<i>Member</i>
3.	Smt. Namita Sharma W/o Shri Padam Chand Sharma, Vashisht Vihar, Bawsant Vihar, Bye Pass, Saproon, Solan-173211. Contact No. 94180-87242, 01792-226208	<i>Member</i>

By order,
P. C. Kapoor,
Addl. Chief Secretary (SJ&E).

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION**

Shimla, the 16th November, 2013

No. Sharm (A) 7-1/2005-Part File-1.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment of the Government of Himachal Pradesh:—

Sr. No.	Case No. August, 2013	Title of the Case	Date of Award
1.	26/2012	Shri Chet Ram V/s M/s Punjab Security services, Rajgarh Road, Solan.	7-9-2013
2.	42/2012	Smt. Sunita Sharma V/s M.D. H.P. State corp Milk.	16-9-2013
3.	18/2008	Shri Harbans Singh V/s M/s Vectra Pharmaceuticals Ltd.	17-9-2013
4.	4/2006	Shri Udham Singh V/s HPSEB (E) Rajgarh,Distt. Sirmour.	7-7-2013
5.	51/2008	Pradhan Himachal V/s Collector of Forest, Sirmour.	30-9-2013

By order,
Sd/-
Pr. Secretary.

**IN THE COURT OF A. S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA CAMP AT SOLAN**

Ref no. 26 of 2012.
Instituted on 14.6.2012.
Decided on 7.9.2013

Chet Ram S/o Shri Krishan Lal, r/o Village Kotla Chamrog, P.O. Oachghat, Tehsil & District Solan, HP. *.Petitioner.*

VS.

The Principal, M/s MN- DAV Dental College and Hospital, Tatul, P.O. Oachghat, Tehsil & District Solan, HP.

The Manager, M/s Punjab Security Services, B.O. Near, M.C Office, Rajgarh Road, Solan, District solan, H.P. *.Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner: Shri J.C. Bhardwaj, AR.
For respondent: Exparte.

AWARD

The reference for adjudication, is as under:—

"Whether termination of the services of Shri Chet Ram S/o Shri Krishan Lal R/o Village Kotla Chamrog, P.O Oachghat, Tehsil & District Solan, HP by the (1) Manager, M/s Punjab Security Services, B.O Near, M.C Office, Rajgarh Road, Solan, District solan, H.P (2) Principal, M/s MN- DAV Dental College and Hospital, Tatul, P.O Oachghat, Tehsil & District Sonal, HP (Principal Employer) w.e.f. 1.6.2010 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, past service benefits, seniority and amount of compensation, the above workman is entitled to from the above employer?"

2. The case of the petitioner is that initially he was appointed, by respondent No. 1 (M/s MN DAV Dental College and Hospital, Tatul, P.O. Oachghat, Tehsil & District Solan, HP) as Lab Assistant, during the month of November, 2006. Respondent No. 2, the so called contractor was stranger to him because he had nothing to do with him, at any point of time, during the period he remained under the employment of respondent No.1. In fact, he (petitioner) had never worked under the supervision and control of respondent No. 2. It is further averred that although, he remained on the roll of respondent No. 1, directly, till April, 2009, when his name was illegally and arbitrarily transferred to respondent No. 2 (so called contractor), but he (respondent No. 2) never took any work from him. As a matter of fact, he (petitioner) had been working directly under the control of Dr. Mansi Jain being the Head of Department in the college. Although, the Principle of the college had assured him that his name would be taken back on the roll of the college as soon as management of the college would create some posts of the Lab Attendant in the near future but the needful was not done. On the contrary, his services were retrenched/terminated, on 1.6.2010, even without complying with the provisions of the Industrial Disputes Act, 1947 and that of Employment Standing Orders Act, 1946 and Rules, made thereunder. Thus, his termination of services is without any basis/reasons. Apart from this, his junior, Shri Pumesh Kumar was retained

and taken in the service and made regular by the principal of the college. In this way, the action of the principal to absorb his junior on the roll of the college by terminating the services of a senior workman, like him, is highly deplorable. Since, he (petitioner) had been in continuous service as per section 25-B of the Act, his services could not have been terminated without having complied with the provisions of section 25-F of the Act. It is further averred that there could not have been change in the condition of his service without having given him twenty one days' notice in the prescribed manner. Apart from this, to change the condition of his service, some settlement or award was required to be effected, which in this case is lacking. Further, the object of section 10 of the Contract Revolution & Abolition Act, 1970 is to prevent unilateral actions of the employer by changing the condition of service to the prejudice of the workman. In order to protect the interest of the workers, this section has been enacted by the Legislature. It is also said that even, respondent no.1 has been concealing the fact that the petitioner had been working with it (respondent no.1) before his name was entered in the roll of respondent No. 2 (so called contractor). Before terminating his services, neither any show cause notice was issued nor he was served with any chargesheet. The only cause behind his illegal removal/termination was that he had been demanding direct employment under respondent no.1 by opposing his name to be shown under the roll of the contractor (respondent No. 2). It has further been clarified that his junior Shri Pumesh Mehta had been retained in the employment of the college, along-with some others. Even, freshers are being employed in violation of section 25-G & 25-H of the Act. Against this backdrop, a prayer has been made to declare his change in service on the roll of respondent No. 2 to be illegal, null and void and to reinstate him on the same post and work in the employment of respondent No. 1 from the date of his termination with full back wages, seniority and other consequential benefits.

3. Notices had been issued to the respondents. When the case was fixed for 8/10/2012, notice had been duly served upon respondent No. 2 but despite its service, none appeared on its behalf and as such, it was proceeded against exparte.

4. Since, respondent no.1 was not being served by way of ordinary process of service, it was ordered to be served through affixation vide order dated 11.3.2013, for 23.4.2013. On the fixed date, i.e 23.4.2013, service was effected upon respondent No. 1 by way of affixation. Since, in the opinion of this Court, respondent No. 1 had been served in accordance with the provisions of law, it was ordered to be proceeded against exparte, as per order dated 23.4.2013.

5. By way of exparte evidence, the petitioner has examined himself as PW-1.

6. Besides having heard the exparte arguments, I have also gone through the record of the case carefully.

7. It has been specifically alleged by the petitioner that in the month of November, 2006, he had been appointed, directly, by respondent No. 1 and that he continued to remain in its service till 1.6.2010, when his services were illegally terminated. It has also been stated that although, his name remained on the roll of respondent No. 1 till April, 2009 but in the said month and year, his name was illegally and arbitrarily transferred on the roll of respondent No. 2 (so called contractor), who never took any work from him.

8. From the stand, which has been taken by petitioner, it is abundantly clear that he had been directly appointed by respondent No. 1 and that he never worked under the supervision and control of so called contractor (respondent No. 2). The contention of the petitioner is further to this effect that he had been in continuous service, as per section 25-B of the Act, under respondent No. 1 and that he had also been completing more than 240 days in each calendar year. He also says that a person, junior to him, namely Pumesh Mehta has been retained in the employment of respondent No. 1, along-with some others, in violation of section 25-G & 25-H of the Act.

9. When, petitioner appeared in the witness box, as PW-1, he has supported all the facts as stated in the petition, on oath, including that he had been directly employed by respondent no.1 as Lab Assistant during the month of November, 2006 and continued to remain working under it till his services were terminated on 1.1.2010. As far as respondent No. 2 is concerned, he is stranger to him because neither he (respondent No. 2) employed him (petitioner) nor supervised/controlled his work. He further stated that in fact, he had been working under the control of Dr. Mansi Jain, Head of Department. In every calendar year, he had been working continuously for more than 240 days. Before terminating his services, neither any notice was issued to him nor compensation was paid. His junior Shri Pumesh Mehta is still working as Lab Assistant with respondent no.1 and now his services have been regularized. No enquiry had been held before terminating his services.

10. From the statement of the petitioner (PW-1), which has gone uncontroverted/un rebutted, it stands duly proved that he had been directly employed, as Lab Assistant, by respondent No. 1 and further that the so called contractor (respondent No. 2) had nothing to do with him because neither he had any control over him nor supervised his work as Lab assistant. The petitioner (PW 1) has further stated that in each calendar year, he had been completing 240 days. He further stated that his junior Shri Pumesh Mehta is still working with respondent and his services have been regularized.

11. The evidence, which has come on record, clearly goes to show that the petitioner had been directly appointed by respondent no.1 and that, in each calendar year, he had been working for more than 240 days, before his termination on 1.6.2010. I may mention that respondent no.2 has not chosen to contest the claim of the petitioner for its having been proceeded against exparte. In case, it had been opted by respondent No. 2 to have contested the claim of the petitioner, it could have come on record as to whether, the petitioner had been appointed by it (respondent No. 2), directly or he was on the roll of respondent No. 1 before transferring his name on the roll of respondent No. 2 (so called contractor). For respondent No. 1 also to have been proceeded against exparte, the contention of the petitioner that he had been directly appointed, on its roll, goes un rebutted including that he kept on, continuing to work for 240 days in each calendar year before his alleged termination on 1.6.2010. His version that Shri Pumesh Mehta, his junior has been kept in service also goes un-rebutted. Be it stated that in support of his such averments, as made in the petition, the petitioner, by appearing in the witness box as PW-1, has also stated on oath. Since, his version, as made on oath, has gone un-rebutted, I have been left with no alternate but to believe the version of the petitioner that he had been directly appointed by respondent no.1 as Lab Assistant during the month of November, 2006 and that he continued to remain on its roll till his services were terminated on 1.6.2010. As the petitioner had been completing 240 days in each calendar year, his services could have been terminated on having complied with the requirements of section 25-F of the Act. Since, it is also the case of the petitioner that his juniors have been retained in service, requirements of sections 25-G & 25-H were also required to be complied with. As, on record, it stands proved that the services of the petitioner had been terminated in violation of the provisions of the aforesaid sections (25-F, 25-G & 25-H) of the Act, therefore, his termination dated 1.6.2010 is held to be illegal, null and void.

12. For the reason that the evidence of the petitioner that he had been initially appointed by respondent no.1 and further that his name was illegally and arbitrarily transferred on the roll of respondent no.2 (so called contractor) also goes un-impeached, it is further held that in the month of April, 2009, his name was wrongly and illegally transferred on the roll of respondent No. 2 (so called contractor). In this way, he had continued to remain on the roll of respondent No. 1 from the month and year of his appointment i.e November, 2006, till his termination i.e 1.6.2010.

13. Consequently, for what has been stated and observed above, this petition is allowed and the termination of the services of petitioner from the roll of respondent No. 1 w.e.f. 1.6.2010 is

set aside and he is ordered to be reinstated in service with seniority and continuity alongwith 25% back wages and as such the reference is answered accordingly in favour of petitioner and against the respondents. Let a copy of this award be 5 sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 7th September, 2013.

A. S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla
Camp at Solan.

**IN THE COURT OF A. S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 18 of 2008.
Instituted on 11.4.2008.
Decided on. 17.9.2013.

1. Harbans Singh S/o Shri Dhani Ram, r/o Village, Nain P.O. Luharwin, Tehsil Ghumarwin, District Bilaspur, HP.

2. Amitabh S/o Shri Basu Dev, r/o Village Khas, P.O. Bhararu, Tehsil Joginder Nagar, District Mandi, HP. .*Petitioners.*

VS.

M/s Vectra Pharmaceuticals Pvt. Ltd. Plot No. 86, HPSIDC, Baddi, Tehsil Nalagarh, District Solan, HP. .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioners: Shri P.S Chandel, Advocate.
For respondent: Ms. Manjula Upadhyay, Advocate.

AWARD

The reference for adjudication is as under:—

“Whether the termination from services of S/Shri Harbans Singh and Amitabh, workmen by the management of M/s Vectra Pharmaceuticals Pvt. Ltd. Plot No. 86, HPSIDC, Baddi, Tehsil Nalagarh, District Solan is legal and justified? If not, what relief, seniority, back wages and amount of compensation the concerned aggrieved workmen are entitled to?”

2. It be clarified that Harbans, petitioner No. 1 and Amitabh petitioner No. 2 have filed separate statement of claims before this Court, consequent upon the receipt of reference, made to this Court, by the appropriate government, which have been registered vide reference No. 18 of 2008 and to be decided by this award.

3. The contention of petitioner No.1 (Amitabh) is to this effect that in the month of November, 2005, he was engaged on permanent/regular basis by the respondent company (hereinafter referred as respondent) and joined his job/services w.e.f. 5.12.2005 on fixed monthly salary of Rs. 4,000/-. On the pretext of paying salary, the respondent got his signatures on blank paper and did not allow him to join duties in the month of July, 2006. Since, he was not allowed to continue, he could not complete 240 days in a calendar year. Before not allowing to perform his work, he was neither given any notice nor paid compensation. Thus, he is entitled for back wages with interest quantified at Rs. 1,39,520/- and also Rs. 50,000/- on account of mental harassment etc. He is also entitled for rent of room quantified at Rs. 64,000/- for the period he remained without job besides litigation costs of Rs. 5,000/-.

4. Petitioner no.2 (Amitabh) states that in the month of December, 2005, he was engaged as plumber on permanent/regular basis, by the respondent, on monthly salary of Rs. 4500/- and joined his duties on 15.12.2005. On the pretext of salary, the respondent took his signatures on blank paper and did not allow him to join the duties in the month of July i.e 3.7.2006. Since, he was not allowed to continue with his work, he could not complete 240 days in a calendar year. Before, not allowing him to perform his work/duties, neither he was given any notice nor paid compensation. Thus, he is entitled for back wages with interest, quantified at Rs. 1,77,873/- and also Rs. 50,000/- on account of mental harassment etc. He is also entitled for the rent of room, for the period he remained without job, quantified at Rs. 64,000/- besides litigation costs of Rs. 5,000/-.

5. The claim of petitioner no.1 (Harbans) has been resisted by the respondent, on filing separate reply, by raising various preliminary objections including maintainability. On merits, it has been asserted that the petitioner (Harbans Singh) had joined the employment of the respondent w.e.f. 1.5.2006 on temporary basis or fixed term employment for two months, in terms of letter of appointment dated 1.5.2006, on monthly salary of Rs. 2100/-. It has further been clarified that he had been appointed for two months, w.e.f. 1.5.2006 to 30.6.2006. Accordingly, his services were dispensed with on the expiry of the period of employment. It has been denied that his signatures had been procured on blank paper. As far as earned wages of the petitioner are concerned, the same were offered before the Conciliation Officer but he did not collect the same. Thus, there remain no dues payable to him by the respondent. He had also been covered under the ESI Act, 1948 and EPF & Misc. Provisions Act, 1952. During his employment, he had been provided his dues and benefits to which he was entitled. Other allegations denied.

6. By filing separate reply, the claim of petitioner no.2 (Amitabh) has also been contested on raising various preliminary objections including maintainability. On merits, it has been asserted that petitioner No. 2 (Amitabh) had joined the respondent w.e.f. 1.5.2006, on temporary basis, as helper on monthly salary of Rs. 2100/-. It is further asserted that the petitioner No. 2 (Amitabh) had submitted his resignation and for this reason, there was no question to have given him any notice. At that time, when he resigned, he had also accepted his full and final dues. Other allegations denied.

7. By filing separate rejoinders, the petitioners have reaffirmed their own allegations by denying those of the respondent.

8. Pleadings of the parties gave rise to the following issues which were struck on 22.6.2010.

1. Whether the services of the petitioners S/Shri Harbans Singh and Amitabh have been terminated illegally and in an unjustified manner by the respondent in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged?

..OPP.

2. If issue No.1 is proved, to what service benefits, the petitioners are entitled to?

..OPP.

3. Whether the claim of the petitioners is not maintainable as alleged in preliminary objections? . . . OPR.
4. Relief.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue No. 1 No.

Issue No. 2 Becomes redundant.

Issue No. 3 No.

Relief. Reference answered in favour of the respondent and against the petitioners, per operative part of award.

Reasons for findings

Issue No. 1.

11. The contention of both the petitioners is to this effect that the respondent had not allowed them to complete 240 days in a calendar year. This goes to show that the petitioners do not assert that their services had been terminated in contravention of the provisions of section 25-F of the Act. Here, I may like to point out that this Court is required to answer the reference which has been made to this Court. As per the reference, it is to be determined as to whether the services of the petitioners had been terminated legally and justifiably. Be it stated that in the statement of claims which have been filed by the petitioners, they have not alleged that their services had been terminated illegally and in unjustified manner. Relief, which they have sought to claim, pertains to their entitlement for back wages, mental harassment etc. The relief, which has been sought/claimed by the petitioners is not in consonance with the reference made to this Court. As, this Court is required to answer the reference, which has been made to this Court, therefore, it needs to be seen as to whether the services of the petitioners had been terminated in illegal and unjustified manner or not.

12. As far as petitioner no.1 (Harbans Singh) is concerned, the defence version is to this effect that consequent upon the appointment letter dated 1.5.2006, he had been given employment, w.e.f. 1.5.2006 to 30.6.2006, on monthly salary of Rs. 2100/-. After the expiry of said period, his services stood dispensed with. As far as petitioner no.2 (Amitabh) is concerned, he had been given appointment w.e.f. 1.5.2006 on temporary basis, on monthly salary of Rs. 2100/-, as helper and that consequent upon his resignation, dated 3.7.2006, which was accepted, he left the job on having received full & final dues.

13. When Harbans Singh appeared in the witness box as PW-1 he stated that in the month of November, 2005, he had joined the respondent as helper on monthly salary of Rs. 4000/- and that after June/July, 2006, he was given break in service. Before removing him from service/job, no notice was given. In the cross-examination, he denied that his appointment was as per letter mark A and that as per this letter he had been informed that his services were to be terminated on 28.6.2006. He admitted that the respondent had never given him less salary. Shri Sunil Verma

(RW-1), in his affidavit Ex. RW-1/A, has stated that in terms of appointment letter dated 1.5.2006, petitioner no.1 (Harbans Singh) had been engaged as helper on temporary basis w.e.f. 1.5.2006 to 30.6.2006. During his employment, he had worked only for thirty eight days, and remained absent for fifteen days. His employment letter is Ex. RW-1/B and discharge letter Ex. RW-1/C.

14. The perusal of appointment letter Ex. RW-1/B dated 1.5.2006 goes to show that Harbans Singh (petitioner No. 1) had been engaged/employed for two months w.e.f. 1.5.2006. Ex. RW-1/C is the discharge letter dated 21.6.2006 which goes to show that w.e.f. 28.6.2006, his services stood discharged as the same were no longer required.

15. From the evidence of Shri Sunil Verma (RW-1) coupled with the aforesaid documents, it stands duly proved that petitioner No. 1 (Harbans Singh) had been given employment for two months and that after the expiry of this period, his services stood discharged. Thus, it cannot be said that he had not been allowed to complete 240 days in a calendar year, as is the contention, raised before this Court. It needs to be reiterated that the claim of the petitioner No. 1 (Harbans Singh) is not regarding his removal from services, in illegal/unlawful manner, but the same is regarding his entitlement for back wages etc. Thus, he has failed to prove that his services have been illegally terminated by the respondent.

16. As far as petitioner No. 2 (Amitabh) is concerned, he had been employed w.e.f. 1.5.2006 on temporary basis, as helper, on monthly salary of Rs. 2100/-. Whereas his contention is to this effect that he was not allowed to join his duties in the month of July i. w.e.f. 3.7.2006, the defence version is that he had submitted his resignation, on 3.7.2006, which was accepted and that on the same day, he (petitioner No. 2) was paid full & final dues. It is to be mentioned that in the claim petition, it has been stated that the signatures of petitioner No. 2 (Amitabh) had been taken on blank paper, on the pretext of paying the salary. I may mention that as far as his signatures on resignation letter Ex. RW-1/F, are concerned, he admitted the same but according to him, he had signed on blank paper and not on the alleged resignation.

16. RW-1 Shri Sunil Verma, in his affidavit, has specifically stated that Amitabh (petitioner no.2) had resigned vide letter Ex. RW-1/F and that vide Ex. RW-1/G, he had received dues as full & final settlement. Here, I may like to mention that there is no reliable and cogent evidence, led by petitioner No. 2 (Amitabh) that his signatures had been fraudulently taken on a blank paper and that the same was used to prepare his resignation. It is further to be observed that resignation letter Ex. RW- 1/F, appears to be in the same ink and handwriting, in which petitioner No. 2 (Amitabh), had signed. It is further proved that vide Ex. RW-1/G, the petitioner No. 2 (Amitabh) had received his full & final settlement. It is not the case of petitioner No. 2 (Amitabh) that his signatures had been taken on various blank papers.

17. Thus, from the documents, as aforesaid, and also the evidence of Shri Sunil Verma (RW-1), it stands duly proved, on record, that petitioner no.2 (Amitabh) had not been disallowed to continue with his employment/work but as per resignation letter, Ex. RW-1/F, he had left the job on having received full and final settlement vide Ex. RW-1/G. However, I may like to point out that it is not the case of petitioner No. 2 (Amitabh) that his services had been illegally and unlawfully terminated by the respondent. In fact, he has made his claim in order to seek back wages etc., as aforesaid. Since, he had not continued to remain in job/service for 240 days in a calendar year, it cannot be said that his services had been terminated in contravention of the provisions of the Act.

18. Consequently, for my above discussion, I hold that both the petitioners have failed to prove that their services had been terminated, in illegal and unjustified manner, in contravention of the provisions of the Act. Thus, my answer to this issue is in "No".

Issue No. 2

19. Since, issue no.1 has been decided in negative, this issue becomes redundant.

Issue No. 3

20. Consequent upon the reference, made to this Court, by the appropriate government, the petitioners had filed claim petitions which cannot be said to be not maintainable. Thus, by holding the claim petitions to be maintainable, my answer to this issue is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim petitions, filed by the petitioners, deserve to be dismissed and accordingly, the same are dismissed with the result, this reference is decided against them and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 17th day of September, 2013, in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**THE COURT OF A. S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUM- LABOUR COURT, SHIMLA**

Ref no. 51 of 2008.
Instituted on 8.9.2008.
Decided on 30.9.2013

Pradhan, Van Mazdoor Union, Circle Nahan (affiliated to AITUC) registration no. 450/10, District Sirmour, H.P. through JC Bhardwaj, President, HPAITUC, HQ Saproon, Solan, H.P.
..Petitioner.

VS.

The collector of Forests Solan & Sirmour at Nahan, Department of Forest Government of Himachal Pradesh.
..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C. Bhardwaj, AR.
For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

The reference for adjudication, is as under:—

"Whether the demands raised by the Himachal Van Mazdoor Union Circle Nahan, Registration No. 450/10, District Sirmour, HP through its demand notice dated 2.1.2007 (copy enclosed) to Collector of Forests Solan and Sirmour at Nahan are legal and maintainable? If yes, what relief the workers union/workers are entitled to?"

2. It has been alleged by the Himachal Van Mazdoor Union affiliated to AITUC through its president Shri J.C. Bhardwaj (hereinafter referred as petitioner) that it had preferred demand notice on 2.1.2007, annexure PA to the Collector of Forests, Solan and Sirmour at Nahan wherein it was submitted that the workmen working under Forest Circle Nahan are being given artificial and frictional breaks even if they had been present on the work. Thus, a demand was made to mark their attendance everyday as per the practice prevalent in the departments of PWD and IPH in Himachal Pradesh Government. Apart from this, it was also asserted that the respondent department (hereinafter referred as respondent) indulged in unfair labour practice while depriving the workmen to complete 240 days by not marking their presence, even if they had been present on the work. This exercise was being adopted by the respondent in order to evade its liabilities to regularize the workmen. Apart from this, it was also alleged that the services of the workmen had been terminated without any notice and complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as Act). If the workmen had been absent, the respondent could have issued some letter of explanation to them. The petitioner through demand notice, also asserted its claim for equal pay for equal work and also requested for grant of rates of Chainman on the basis of work being taken from the workmen employed under the respondent. Since, the aforesaid demands had not been considered by the respondent, the reference in question, came to be made to this Court by the appropriate government. It has also been alleged that when the workmen, who had worked under the respondent, demanded the pay for the Chainman, their services had been terminated on 30.6.2008 without complying with the provisions of section 25 of the Act because each of them had completed more than 240 even twelve calendar months preceding their termination as well as in the previous years. The workers, whose services had been terminated on 30.6.2008 are as under: S/Shri Rameshwar Dass (working since, 2.1.2001), Sukhbir Singh (10.10.1999), Devinder Singh S/o Amar Singh (October, 1998), Devinder Singh S/o Ram Swarup (1994), Maan Singh (October, 1998), Gian Chand (Jan., 2001), narinder Singh (March, 1999), Satvir Singh (1999), Ramesh Kumar S/o Shri Ram Swroop and Ramesh Kumar (1.12.1999) and Chaju Ram (30.6.2008). It is further averred that the services of the aforesaid workmen had been terminated by the respondent during the pendency of the proceedings before the Labour-cum-conciliation Officer, Nahan, in contravention of section 33 of the Act. It is further clarified that during the pendency of demand notice, the respondent had not filed any application for permission or approval before Labour-cum Conciliation Officer, Nahan, in order to terminate the services of the workmen, aforesaid. Further their services had been terminated against the principle of last come first go as two junior workmen namely Shyam Singh and Nirmal Singh have been retained in service whereas, the senior workmen stood terminated on 30.6.2008. However, on 18.8.2009, the respondent reinstated/reengaged all the above named workmen who are entitled for back wages, seniority and continuity for the period they had been kept out of job i.e w.e.f. 30.6.2008 till their reinstatement on 18.8.2009.

3. The claim of the petitioner has been contested on having raised various preliminary objections qua maintainability and also that the forestry works are generally seasonal in nature having two parts namely field operations which requires engagement of daily wages/mazdoors and documentation work. Under normal circumstances, daily wagers engaged on daily wages at field operations have to work maximum 200 working days in a calendar year. Thus, engagements and disengagement of the daily wagers is a regular and normal phenomenon which is followed strictly on the principles of last come first go and vice versa. Further, the mazdoors cannot be engaged/reengaged without any work. Further, as per law, the cessation of work at the end of the season, does not amount to retrenchment. It is further averred that the labourers are engaged in accordance with seniority and exigency of work by the respondent. On merits, it has been denied that the daily waged mazdoors have been marked absent from their duties even if they were present. Only, the daily waged mazdoors had been disengaged for lack of work. However, when the work was again available in the field, they were again engaged. Further, no such daily waged mazdoor can be treated as chainman as all such workers are being engaged as daily waged mazdoors and not as chainman. Despite that, the wages given to each daily waged mazdoors, by the

respondent, is equal to the rates of chainman which is clear from the copy of rates of daily waged workers, filed with the reply. It is further asserted that daily waged mazdoors have never competed 240 days, of their service, in a calendar year except one or two years as is clear from the attached mandays cahrt. The workmen as alleged by the petitioner had been disengaged due to nonavailability of work on 30.6.2008. Thus, there had been no contravention of the provisions of section 33 of the Act. It has further been clarified that the services of the daily waged mazdoors had been disengaged strictly on the principles of last come first go, due to non-availability of work. During 11/2008, two daily waged mazdoors were required for field work in Viyas Kotri in Giri Nagar Forest Range in forest settlement Nahan. For this reason, senior mazdoors S/Shri Devender Singh and Jagat Singh were called through letter dated 24.10.2008 but they did not turn up. Under these circumstances, their next juniors namely Sham Singh and Nirmal Singh had been enaged on work. Later on all the mazdoors/workers had been reengaged as per availability of work on 18.8.2009 on the principle of last com first go. Since, daily waged mazdoors had been reenaged/disengaged as per the availability of work, they are not entitled for back wages, seniority and continuity as alleged. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondents.

5. The pleadings of the parties gave rise to the following issues which were struck on 8.7.2010.

1. Whether the demands raised by petitioner union through its demand notice dated 2.1.2007, are legal and maintainable as alleged? . . .*OPP*.

2. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 *No.*

Relief. Reference answered against the petitioner, per operative part of award.

Reasons for findings

Issue No. 1

8. I may mention at the very out-set that this court is required to answer the reference which has been made to this Court by the appropriate government.

8. The evidence of the petitioner, when he appeared in the witness box as PW-1, goes to show that, on daily wages, he was engaged as forest worker in the year, 1985 and continued as such till July, 2003, when his services were disengaged without notice and compensation. Even, the respondent kept his juniors and also engaged new persons. After having been dis-engaged from the service, he did not do any work. In the cross-examination, he (petitioner) stated that from April, 1985, when he was engaged, he continued to remain in service upto July, 2008. He denied not to have completed 240 days in each calendar year. He specifically denied that except the years, 1988 to 1992, he did not complete 240 days in any of the calendar years. He denied that mark R-1 is his mandays chart and that, on his own, he left the job/service. He also denied that the respondent has neither engaged any person junior to him nor new one. No such documents have been produced by him which could go to show that the respondent has engaged persons junior to him or new one.

9. Shri Khatri Ram (PW-2) says that in the Forest Department he has been working as daily wager for the last 19 years. In the year 2003, the petitioner had been disengaged by the department without any notice and compensation despite the fact that he had been working for 240 days in each calendar year. In the cross-examination, he admitted that till 2008, the petitioner kept on doing work/job. He denied that the petitioner, on his own, left the job.

10. Shri Ram Chand (RW-1) says that the petitioner had been engaged for doing seasonal forest works in the year, 1985 and he continued as such till 2008. Even, during that period, he (petitioner) had been irregular in doing his job. Ex. RA is his mandays chart which is correct as per the original brought by him. Except the years, 1988 to 1992, he did not complete 240 days in any calendar years. In the year 1995, he had only worked for 33 days. Neither, he (petitioner) had been disengaged from service nor his juniors are doing job. In the year, 2008, he (petitioner), on his own, had left the job despite the fact that work was available with the department. In the cross examination, he has stated not to have issued notice to the petitioner. No such writing is available with him which could go to show that the petitioner, on his own, had left the job. No other persons have been engaged for doing seasonal work, when the petitioner left the job. He denied that the petitioner had not left the job, on his own, but his services were disengaged.

11. When regard is given to the evidence of the petitioner (PW-1), it is abundantly clear that he himself admits that from April, 1985, he had continued to remain in job till July, 2008. To the similar effect is the version of Shri Khatri Ram (PW- 2). From the evidence which has been led by the petitioner, it is abundantly clear that his stand, as taken in the petition, that his services were disengaged in the month of July, 2003 is totally incorrect/wrong. It is not his case that his services had been disengaged in the month of March, 1995, as is the reference, which has been made to this Court. It has been specifically stated by Shri Ram Chand (RW-1) that the services of the petitioner had not been disengaged but in the year, 2008, on his own, he left the job despite the fact that work was available with the respondent. According to him, Ex. RA is the mandays chart of the petitioner. The perusal of the mandays chart, Ex. RA, goes to show that in the year, 1985, the petitioner had worked for 78 days and that he had continued to remain in service/job till July, 2008, in which year, he had worked for 55 days, in total. In the year, 1995, the petitioner had worked for 33 days. In the preceding years i.e 1994 and 1993, he had worked for 132 and 55 days respectively. It is further to be noted that in the years 2007 and 2006, the petitioner had worked for 47 and 31 days respectively. From the mandays chart Ex. RA, it is further borne out that in the year, 2003, the petitioner had not worked at all. Thus, the contention of the petitioner that his services had been disengaged in the year, July, 2003 is contrary to mandays chart Ex. RA. Even, in the year, 2002, the petitioner had worked for 24 days and in the year preceding to that (2001), he had worked for 20 days. In this way, from the mandays chart Ex. RA, it is quite clear that neither in the year preceding to 1995 nor 2003, the petitioner had worked for 240 days. Even, he had not worked for 240 days in the preceding year 2008. From the documentary as well as oral evidence which is on record, it is clearly borne out that the petitioner has failed to prove that he had worked continuously before his services were allegedly disengaged by the respondent. On the other hand, from the evidence of Shri Ram Chand (RW-1), it is clear that, on his own, the petitioner had left the job/service. The petitioner could have become entitled to be issued notice and also paid compensation, only if he had proved that in the year preceding to his alleged disengagement, he had worked for 240 days and for this reason, he had remained in continuous service. I disagree with the Learned Counsel appearing on behalf of the petitioner, that from the evidence on record, the petitioner succeeds to prove his case which requires his reengagement along-with consequential service benefits. Learned Dy. DA appearing on behalf of respondent has rightly urged that from the evidence which is, on record, the petitioner has failed to prove that he had remained in continuous service as per the provisions of the Act.

12. Consequently, for what has been stated hereinabove, I hold that the petitioner has failed to prove that his services had been terminated by the respondent w.e.f. March, 1995 in violation of the provisions of the Act. It is further to be noted that the petitioner has even not succeeded in proving that his services had been disengaged in the month of July, 2003, as is his stand taken in the petition, from his own evidence and also the mandays chart Ex. RA.

13. Apart from this, the petitioner has not brought any such record before this Court which goes to show that after his alleged disengagement from service, new persons have been engaged by the respondent. His evidence further fails to prove that any junior to him has been engaged/retained by the respondent. Thus, I hold that the petitioner has failed to prove that his services had been disengaged w.e.f. March, 1995 in contravention of the provisions of the Act and as such my answer to this issue is in "No".

Issue No. 2.

14. For the failure of the petitioner to have proved issue No. 1, this issue becomes redundant.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 7th June, 2013 in the presence of parties counsels.

A. S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla
Camp at Solan.

**IN THE COURT OF A.S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 42 of 2012.
Instituted on 14.6.2012.
Decided on 16.9.2013

Sunita Sharma W/o Shri Jagdish Chand O/o HP State Co-operative Milk Producer Federation Ltd., Totu, Shimla-11. . .Petitioner.

VS

The Managing Director, HP State Co-operative Milk Producer Federation Ltd., Totu, Shimla-11. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner: Shri Niranjana Verma, Advocate.

For respondent: Shri M. R. Verma, Advocate.

AWARD

The reference for adjudication, is as under:—

"Whether the action of the employer i.e the Managing Director HP State Cooperative Milk Producer Federation Ltd., Totu, Shimla-11 to change the service condition i.e from Gardener to Cleaner of smt. Sunita Sharma W/o Shri jagdish Chand O/o HP State Co-operative Milk Producer Federation Ltd., Totu, Shimla-11 without following the provisions of the Industrial Disputes, 1947 and not providing her the earned leave and casual leave etc., as per provisions of the Factories Act, 1948, as alleged, is legal and justified? If yes, what relief the above worker is entitled to from the above employer?"

2. The contention of the petitioner is that she was engaged as Gardener (Mali) on 3.5.2003, on daily wages, by the respondent establishment. Vide order dated 10.4.2006, she had been re-assigned the duty in packing section and on 24.10.2004, without any notice, her duty was changed because the work of washing milk cans was assigned to her. Such action of the respondent, in changing her service conditions is wrong and without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as Act). It is further said that the respondent is not providing her earned, casual and other leaves including sick leave etc., contrary to the provisions of the Factories Act. With the respondent, she has completed nine years of service and had been completing 240 days in each preceding calendar year.

3. The petition has been contested on having raised preliminary objections qua maintainability and estoppel. On merits, it has been averred that the petitioner had been engaged on daily wages basis, in accordance with the conciliation proceedings, dated 30.8.2005, and that the replying respondent/federation is complying with the terms and conditions of such conciliation. It has further been maintained that since the petitioner is working on daily wages basis, the miscellaneous works, as per requirement of the respondent, are being take from her. Moreover, the respondent is competent to take any work from her, in accordance with its requirements.

4. Pleadings of the parties gave rise to the following issues which were struck off on 7.6.2013.

1. Whether the action of the respondent to change service conditions of the petitioner from Gardner to Cleaner without following the provisions of the Act and nor providing her the earned leave and casual leave etc. as per the provisions of the Factories Act, 1948 is illegal and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved, to what relief the petitioner is entitled to? . . .*OPP.*
3. Whether this petition is neither competent nor maintainable as alleged? . . .*OPR.*
4. Whether the petitioner is estopped from filing this petition due to her own acts, deed, conduct and acquiesces? . . .*OPR.*
5. Relief.

5. Be it stated that the petitioner has failed to lead any evidence, in support of her claim despite, having been afforded opportunities.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 No.

Issue No. 2 Becomes redundant.

Issue No. 3 No.

Issue No. 4 No.

Relief. Reference answered against the petitioner, per operative part of award. Reasons for findings.

Issue No. 1

7. The contention of the petitioner is that the respondent had changed her service condition from Gardener to Cleaner without following the provisions of the Act and that she was not being granted earned and casual leave etc., as per the provisions of the Factories act, 1948.

8. On the other hand, plea taken by the respondent is that on 30.8.2005, conciliation proceedings had been effected between the parties, the terms and conditions of which are being complied with by the respondent. As per those conciliation proceedings, the petitioner had been engaged on daily wage basis.

9. Since, the petitioner has failed to support the facts, as stated in the claim petition, on oath, by stepping into the witness box, as her own witness, there is no material on record to substantiate her claim, on oath. In the absence of any evidence having been led by the petitioner, her claim that the respondent has changed her service condition without following the provisions of the Act and that she is not being granted earned, casual and other leaves as per the Factories Act, has not been proved. When such is the position, it cannot be said that the action of the respondent in changing her service condition is illegal and unjustified. Consequently, I have been left with no other alternative but to answer this issue in negative which now stands decided in "No". Issue no.2

10. Since, issue No.1 has not been proved, this issue becomes redundant. Issue No. 3 & 4.

11. Both these issues are being taken up together for discussion and discussion. I may mention that since the petitioner had failed to lead evidence despite having been afforded opportunities and resultantly her evidence came to be closed by the order of this Court, the respondent did not think it necessary to lead evidence on these issues, the onus of which is upon it. In this way, for the failure of the respondent to have led evidence on these issues, under discussion, the same also remain unproved. Thus, both these issues are decided in negative.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed. Consequently, the reference stands answered against her and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 16th September, 2013.

A. S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF A. S. JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 4 of 2006.

Instituted on 20.2.2006.

Decided on. 17.9.2013.

Udam Singh S/o Shri Durga Singh R/o Village Shelech, P.o Kotla Bangi, Tehsil Rajgarh,
District Sirmour, HP. . .Petitioner.

VS.

1. The Executive Engineer (E) Division HPSEB Rajgarh, District Sirmour, HP.
2. Superintending Engineer, HPSEB Circle Nahan, District Sirmour, HP. . .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner: Shri R.K Khidta, Advocate.

For respondents: Shri Ramakant Sharma, Advocate.

AWARD

The reference for adjudication is as under:

“Whether the termination of services of Shri Udam Singh S/o Shri Durga Singh workman by the Executive Engineer, HPSEB (E) Division Rajgarh, District Sirmour, HP w.e.f 15.6.1996 as alleged by the workman without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. Briefly, the case of the petitioner is that he was engaged as beldar by the respondent Board w.e.f. 21.8.1994 and he worked as such in the office of Junior Engineer, HPSEB, section Chandal, Division Rajgarh, District Sirmour till 15.6.1996, when his services were illegally terminated, orally by the respondent. He had completed 240 days in a calendar year. Since, the respondents had not assigned any reason for his termination and also failed to comply with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred as Act), as well as provisions of Standing Orders of HPSEB, it (respondent) violated the mandatory provisions of the said Act and Standing Orders. After his oral termination, he had been visiting the office of the respondent, number of times. Every time he was being assured that he would be called back in the job. Even, he had given writing to call back him in the job but of no avail. In this way, having believed the assurance of the respondent, he had kept on waiting till September, 2003, in which month he filed a demand notice before Labourcum-Conciliation Officer, Solan. Since, the respondents were adamant during the conciliation proceedings, the reference, aforesaid, came to be made to this Court. It is further alleged that respondents have engaged new persons in contravention of section 25-H of the Act. Even, the provision of section 25-G were also violated. Against this backdrop, it has been further alleged that in terminating his services, respondents had violated the provisions of sections 25-N, 25-F, 25-G and 25-H of the Act. It has further been clarified that before terminating his services, neither any notice had been issued to him nor he had paid any compensation. On the basis of the above averments, a prayer has been made for setting aside his oral termination order dated 15.6.1996 and further to direct the respondents to reinstated him in service w.e.f. 15.6.1996 with all consequential service benefits including back-wages, seniority etc.

3. The claim of the petitioner has been contested on having raised various preliminary objections including maintainability, estoppel and that the same is hit by delay and laches. On merits, it has been asserted that the petitioner had been engaged, as beldar, on daily wages on 16.11.1993 instead of 21.8.1994, as alleged, by SDO (E) HPSEB, Rajgarh and that he worked upto 15.3.1994 instead of 15.6.1996 as alleged. The detail of working days, performed by him, has been shown in annexure RA-1, filed along-with the reply. Since, he (petitioner) had been never regular in his duties, he did not complete 240 days in any calendar year. For this reason, no notice was required to be served upon him in view of the Standing Orders Clause-14(2) A under the Act. It is further averred that the petitioner had left the job, on his own, for the reasons best known to him. It has been denied that the petitioner had met the respondents in respect of his alleged termination. As the petitioner had been quite casual in attending his duties and further that he, on his own left the job, without informing the respondents, there has been no violation of sections 25-G and 25-H of the Act.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondents.

5. Pleadings of the parties gave rise to the following issues which were struck on 17.10.2006.

5. Whether the services of the petitioner have been illegally terminated by the respondents without complying with the provisions of the Industrial Disputes Act, 1947. If so, its effect? . . .*OPP.*

6. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? . . .*OPP.*

7. Whether the petitioner has no locus standi and the application is not maintainable? . . .*OPR.*

8. Relief.

6. Before, I proceed further, it is desirable to be pointed out that on 7.7.2009, the case of the petitioner was dismissed in default. In order to get the case restored, he filed an application on 22.8.2012, which was allowed on 5.4.2013, and thus the dismissal order dated 7.7.2009, was set aside and his case was again restored for further proceedings/decision.

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to reinstatement in service with seniority and continuity from the date of his termination i.e 15.3.1994 till the passing of this award except from 7.7.2009 to 22.8.2012 but without back wages.

Issue no.3 No.

Relief. Reference answered in favour of the petitioner and against the respondents, per operative part of award.

Reasons for findings*Issue no.1 & 2.*

9. Being interlinked, both these issues are taken up together for discussion and decision.

10. It needs to be clarified that as per the reference, which has been made to this Court, the petitioner had allegedly been terminated from service on 15.6.1996. As per the reference, this Court is to decide whether his such termination is improper and unjustified. In the statement of claim which has been filed before this Court consequent upon the receipt of reference, in this Court, the petitioner has alleged that he had been engaged as beldar on 2.8.1995 and that on 15.6.1996, his services were terminated in contravention of the provisions of the Act. This goes to show that as per the case of the petitioner, he had been engaged as beldar on 21.8.1994 and that his services were terminated on 15.6.1996. However, when regard is given to the reply filed by the respondents, it comes on record that the petitioner had been engaged as beldar by SDO (E), HPSEB, Rajgarh on 16.11.1993, and not as alleged by him. It has further been pleaded that that he had kept on working upto 15.3.1994, when on his own, he left the job without informing the respondents. Thus, as per the respondents, the petitioner had worked upto 15.3.1994 and not, 15.6.1996, when allegedly his services were terminated. In these circumstances, the first and foremost question which is required to be determined by this Court is whether the petitioner had joined his services as beldar on 21.8.1994, alleged, or on 16.11.1993, as is the contention of the respondents. Further, it is to be seen as to whether, he had remained in service/job till 15.6.1996, as alleged, or on 15.3.1994, as is the assertion of the respondents.

11. It has been stated by the petitioner, when he appeared in the witness box as PW-1, that in the year 1993, he had been engaged as beldar by the Junior Engineer, HPSEB, section Chandal and that he kept on doing his job till 15.6.1996, when his services were disengaged/terminated without any notice and compensation. This goes to show that it has been stated by the petitioner (PW-1), on oath, that in the year, 1993, he had been engaged by the Junior Engineer, as beldar. Thus, his contention, as made in the claim petition that he had been engaged on 21.8.1994, becomes falsify. Even, from the evidence of Shri Adhoya Kumar (PW-2), it is revealed that the petitioner had worked under him in the year, 1993-94, when a new line was being erected. His such version further goes to show that the petitioner had been in work in the year, 1993. I may further like to mention that the petitioner has not brought, on record, any such document which could go to show that he had been engaged on 21.8.1994. On the contrary, the respondents, along-with their reply, have filed a document pertaining to the detail of the working days in respect of the petitioner. From this document, it is revealed that as per muster roll no. 876, he had been engaged on 16.11.1993, and in the following month, he had worked for three days.

12. It has been stated by Shri Shashi Kant (RW-1) that the petitioner had been engaged as beldar on 16.11.1993, in which year, he had only worked for three days. In this way, from the evidence of the petitioner (PW-1), and also that of Shri Shashi Kant (RW-1), there remains no scope for any doubt that the petitioner has been engaged as beldar on 16.11.1993 and not on 21.8.1994, as alleged.

13. The next question which required to be considered is regarding the period till which the petitioner had remained in job. Whereas, it is the contention of the petitioner that he had remained in job till 15.6.1996, when, his services were illegally terminated. The defence plea is to this effect that on 15.3.1994, on his own, he left the job.

14. Undoubtedly, it has been stated by the petitioner (PW-1) that he had continued to remain in job till 15.6.1996, when his services were terminated, illegally, without notice and compensation but his such version has not been supported by Shri Adhoya Kumar (PW-2) because

he has categorically stated that in the year 1993-94, the petitioner had worked under him while a new line was being erected. Had, the petitioner remained in job/service till 15.6.1996, this witness could have stated in this regard. Then, it needs to be mentioned that Shri Shashi Kant (RW-1) has categorically stated that after 15.3.1994, the petitioner left the job, on his own and did not turn up. As already stated, the petitioner has not filed any document which could go to show that he had continued to remain in job till 15.6.1996. On the other hand, the respondents have filed his (petitioner) detail of working days which goes to show that in the year, 1993, the petitioner had worked for three days and in the year 1994, for ninety days. As per this document, he had worked upto 15.3.1994. However, I would like to point out that no suggestion had been given to Shri Shashi Kant (RW-1) that the petitioner had worked upto 15.6.1996 and not 15.3.1994, as stated by him. In the absence of such cross-examination, the evidence of this witness (RW-1) that the petitioner had worked upto 15.3.1994, gets substantiated. Thus, I have no hesitation in holding that as far as the working of the petitioner with respondents, is concerned, he had worked upto 15.3.1994, and not, 15.6.1996, as has been alleged and stated by the petitioner (PW-1), in his evidence.

15. From the discussion above, it is quite clear that the petitioner had joined his job, as beldar, on 16.11.1993 and continued to remain as such till 15.3.1994. Thus, he had not completed 240 days in a calendar year preceding his alleged termination/disengagement. When, he had not completed 240 days in a calendar year preceding his alleged termination, the provisions of section 25-F of the Act, were not required to be complied with. It has been held by the *Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh* that :

"In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no coworker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

16. The petitioner has also challenged his termination to be illegal by asserting that new persons junior to him were engaged/retained by the respondents in violation of the provisions of sections 25-G and 25-H of the Act.

16. Before, I proceed to discuss this point, it required to be seen as to whether the services of the petitioner had been terminated or he, on his own, left the job without informing the respondents. It has been stated by the petitioner (PW-1) that when he was terminated from services, he, in writing, as per letters Ex. PW-1/A to Ex. PW-1/C, requested the respondents to reengage him in job. The perusal of the aforesaid letters goes to show that Ex. PW-1/A is dated 14.4.1997, Ex. PW-1/B 26.6.1996 and Ex. PW-1/C 25.7.2000. Shri Shashi Kant (RW-1) has admitted that when the petitioner was terminated from service, to the board (respondent), he had written letters Ex. PW-1/A to Ex. PW-1/C. This goes to show that when the petitioner was out of job, he had been requesting the respondents to reengage him by writing aforesaid letters and also orally, as stated by the petitioner (PW-1) in his evidence. In these circumstances, there is no reliable evidence led by the respondents which could go to show that the petitioner, on his own, had left the job without informing them. If the respondents were to prove that the petitioner had left the job, on his own, they were required to lead specific and cogent evidence in this regard. It has been held by our own Hon'ble High Court in *latest HLJ 2007 (HP) 903 State of HP & Others Vs. Bhatag Ram & Another* that:

"Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea."

I may mention that there is no such record/evidence brought by the respondents which could go to show that when the petitioner had allegedly left the job, on his own, he was sent any notice to join the services. Even, there is no document, on record brought by the respondents, which could go to show that any explanation of the petitioner had been called for, when he allegedly left the job, on his own. When, the respondents failed to prove that the petitioner had abandoned his job, the contention of the petitioner that his services had been terminated needs to be believed.

17. In this way, from the discussion arrived at above, it requires to be held that the services of the petitioner had been terminated on 15.3.1994, and not, 15.6.1996 as is alleged by the petitioner.

18. In the evidence of the petitioner, it has come that S/Shri Viswajeet, Sunil Dutt, Narayan Singh, Khajan Singh, Ram Nand, Om Singh and Mohan Lal, who are junior to him are still in job/service. In the cross-examination, h has denied that after him, the department had not engaged any persons junior to him.

19. Shri Jawahar Negi, (PW-3), who has stated on the basis of summoned record, made it clear that S/Shri Viswajeet, Sunil Dutt, Narayan Singh, Khajan Singh, Ram Nand, Om Singh and Mohan Lal are doing job with the respondents and that they are all junior to the petitioner. In the cross-examination, he has further made it clear that the aforesaid persons are still doing job with the department and they have been engaged after 16.11.1993. The evidence of PW-2 Shri Adhoya Kumar goes to show that the work which was being done by the petitioner is still available/going on. There are 7/8 persons working under him and that some of them have been engaged recently.

20. From the evidence, referred to above, it stands duly proved that when the services of the petitioner had been terminated, he had requested the respondents to reengage him by writing letters, aforesaid, and also orally. This goes to show that the petitioner had made himself available for reengagement after his services had been terminated. The evidence further goes to show that after his termination, the respondents had engaged new workers, as named above and that they are all junior to the petitioner. Since, the petitioner had requested to the respondents, in writing, to reengage him and that in consequence thereof, he was not given the job and other persons, as named above, who are junior to him, came to be engaged and as such there is violation of section 25-H of the Act. In other words, it can be said that the petitioner has succeeded in proving that after his termination, the respondents had engaged other persons who are junior to him and that they are still in job. It has been held by the Hon'ble Apex Court in 2007 LLR 72, State of Haryana Vs. Dilbag Singh that "where persons junior to a workman were, still working with management, termination of services of workman being in violation of sections 25-G & 25-H of Industrial Disputes Act will not be valid and legal". Our own Hon'ble High Court in *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903* has held that :—

"Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act."

21. Applying the case laws (supra), the termination of the services of the petitioner w.e.f. 15.3.1994, when on record, it is proved that his junior are still in service, cannot be held to be valid and legal because the same is in contravention of the provisions of section 25-G & 25-H of the Act.

22. Consequently, for my discussion above, I hold that the services of the petitioner were illegally terminated without complying with the provisions of sections 25-G & 25-H of the Act.

23. Since, the termination of the services of the petitioner has been held to be illegal, for being in violation of the provisions of section 25G & 25-H, it required to be seen as to what relied

the petitioner is entitled to. The relief which has been claimed by the petitioner is reinstatement with seniority and continuity in service with full back wages etc. It has been stated by the petitioner (PW-1) that from the date of his services were terminated, he has not been doing any job/work. This shows that the petitioner seeks to get himself reinstated with back wages. The Learned Counsel for petitioner had relied upon 2010(1) Him. L.R (DB) 537, Telecom District Manager, Telecommunication Vs. Shashi Kamal & Anr., in support of his contention that when, the petitioner has proved on record that he is unemployed/without job, he can be reinstated with full back wages. I have considered the case law relied upon by the Learned Counsel for petitioner in the light of the facts of the present case. I may mention that in the case in hand, the petitioner has failed to prove that he had worked for 240 days in a calendar year preceding his termination. The evidence of Shri Shahi Kant (RW-1) goes to show that that in the year, 1993, the petitioner had worked for three days and in the year 1994 for ninety days. In the absence of specific evidence led by the petitioner, on this score, the version of this witness (RW-1) cannot be disbelieved, as far as the working days of the petitioner, aforesaid, are concerned. I may mention that the respondents have filed along with its reply, detail of the working days of the petitioner which substantiate the evidence of RW-1 on this score. It is true that the petitioner has stated that after his disengagement, he had not worked, anywhere, but on this ground, he does not become entitled for back wages particularly when regard is given to this fact that for only ninety three days, he had worked with the respondents. So, the contention of the Learned Counsel for the petitioner that the petitioner deserves to be reinstated with full back wages does not hold good particularly when the entire facts of this case are considered. Here, I may like to point out that the petitioner had not filed the demand notice, before Labour-cum-Conciliation Officer, Solan, on true facts. Although, his service/job had came to an end on 15.3.1994 but in the demand notice, he stated that his services had been terminated on 15.6.1996. This fact had also been concealed by him that he had been engaged on 21.8.1994, instead of 16.11.1993, which stands proved before this Court. Now, the question which arises is regarding the year and month from which the petitioner can be granted continuity and seniority. For the reason that, on record, it is proved that he had been disengaged from service on 15.3.1994, from this date, he can be given continuity and seniority. Next question which needs to be dealt with is to this effect as to whether the petitioner can be given continuity and seniority in service from the date of his disengagement till the passing of this award or not. The case of the petitioner had been dismissed in default on 7.7.2009, and for getting the same restored, an application had been filed by him on 22.8.2012, which was allowed on 5.4.2013. In my view, the petitioner cannot be granted continuity and seniority in service from 7.7.2009, his case was dismissed till 22.8.2012, when he filed an application before this Court for restoration of the case. The case had been dismissed for his failure to have produced his witnesses and to put his presence on the fixed fate i.e 7.7.2009. Further, in order to get his case restored, he took about three years as the application in this regard was filed by him on 22.8.2012. Since, he had taken such a long time for getting his case restored, this is a valid reason to declying him continuity and seniority in service for the period between 7.7.2009 to 12.8.2012.

24. Consequently, for what has been stated above, I hold that the petitioner is entitled to be reinstated in service along-with seniority and continuity from 15.3.1994 till the date of the award except for the period w.e.f. 7.7.2009 to 22.8.2012 but without back wages. And as such, both the issues are decided in affirmative accordingly.

Issue no.3

25. It is not understandable as to why the petitioner has no locus standi to file this petition. Consequent upon the reference which was made to this Court by the appropriate government, he filed statement of claim. Definitely, he has locus standi to file the same. Moreover, from the side of the respondents, it could not be explained as to why he has no locus standi to maintain this case. Thus, my answer to this issue is in "No".

Relief

As a sequel to my findings on the aforesaid issues, this petition deserves to be allowed and accordingly, I allow it with the result, the termination of the services of the petitioner w.e.f. 15.3.1994, is set aside and he is ordered to be reinstated in service with seniority and continuity from the date of his termination i.e 15.3.1994 till the passing of this award except from 7.7.2009 to 22.8.2012 but without back wages. Consequently, in view of the findings arrived at by this Court while deciding this petition, the reference as made by the appropriate government stands answered accordingly in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 17th day of September, 2013, in the presence of parties counsels.

A.S. JASWAL,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.